

**Introduced by Senator Margett**

January 31, 2005

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An act to amend Section 3262 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

SB 130, as amended, Margett. Works of improvement: stop notices.

Under existing law relating to works of improvement, neither the owner nor the original contractor may waive, affect, or impair the claims and liens of other persons except by their written consent, and any term of the contract to that effect is null and void. However, a waiver and release is binding and effective to release the owner, construction lender, and surety on a payment bond from claims and liens if it follows substantially one of the forms provided by existing law, and if it is signed by the claimant, and in the case of a conditional release, if there is evidence of payment to the claimant. Existing law further provides that no oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless it is pursuant to a waiver and release form provided by existing law, or the claimant had actually received payment in full for the claim.

This bill would provide that nothing in the above provisions precludes a stop notice claimant from reducing *the amount of*, or releasing *in its entirety*, a stop notice that has been served upon an owner, ~~and any such~~. *The bill would also specify that the reduction or release of a stop notice shall be in writing and may be served in a form other than those forms set forth in that provision of law. The bill would provide that the reduction or release of a stop notice shall not*

preclude the service of a subsequent stop notice that is timely and proper, *shall release the owner of an obligation to withhold money on account of the stop notice, shall release the claimant's right to enforce the notice, and shall not release any right that the claimant may have other than the right to enforce the stop notice, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 3262 of the Civil Code is amended to~~  
2     ~~read:~~

3     *SECTION 1. Section 3262 of the Civil Code is amended to*  
4     *read:*

5     3262. (a) Neither the owner nor original contractor by any  
6     term of their contract, or otherwise, shall waive, affect, or impair  
7     the claims and liens of other persons whether with or without  
8     notice except by their written consent, and any term of the  
9     contract to that effect shall be null and void. Any written consent  
10    given by any claimant pursuant to this subdivision shall be null,  
11    void, and unenforceable unless and until the claimant executes  
12    and delivers a waiver and release. ~~Such a~~ *That* waiver and release  
13    shall be binding and effective to release the owner, construction  
14    lender, and surety on a payment bond from claims and liens only  
15    if the waiver and release follows substantially one of the forms  
16    set forth in this section and is signed by the claimant or his or her  
17    authorized agent, and, in the case of a conditional release, there is  
18    evidence of payment to the claimant. Evidence of payment may  
19    be by the claimant's endorsement on a single or joint payee  
20    check which has been paid by the bank upon which it was drawn  
21    or by written acknowledgment of payment given by the claimant.

22    (b) No oral or written statement purporting to waive, release,  
23    impair or otherwise adversely affect a claim is enforceable or  
24    creates any estoppel or impairment of a claim unless (1) it is  
25    pursuant to a waiver and release prescribed herein, or (2) the  
26    claimant had actually received payment in full for the claim.  
27    *Nothing in this section precludes a stop notice claimant from*  
28    *reducing the amount of, or releasing in its entirety, a stop notice*  
29    *that has been served upon an owner. The reduction or release of*  
30    *a stop notice, which shall be in writing, may be served in a form*

1 *other than the forms of release set forth in this section. Any*  
2 *reduction or release of a stop notice: (1) shall not preclude the*  
3 *service of a subsequent stop notice that is timely and proper; (2)*  
4 *shall release the owner from any obligation to withhold money*  
5 *on account of the stop notice, to the extent of the reduction or*  
6 *release; (3) shall be effective to release the claimant's right to*  
7 *enforce the stop notice, to the extent of the reduction or release;*  
8 *and (4) shall not operate as a release of any right that the*  
9 *claimant may have, other than the claimant's right to enforce the*  
10 *stop notice, to the extent of the reduction or release.*

11 (c) This section does not affect the enforceability of either an  
12 accord and satisfaction regarding a bona fide dispute or any  
13 agreement made in settlement of an action pending in any court  
14 provided the accord and satisfaction or agreement and settlement  
15 make specific reference to the mechanic's lien, stop notice, or  
16 bond claims.

17 (d) The waiver and release given by any claimant hereunder  
18 shall be null, void, and unenforceable unless it follows  
19 substantially the following forms in the following circumstances:

20 (1) ~~Where~~ *If* the claimant is required to execute a waiver and  
21 release in exchange for, or in order to induce the payment of, a  
22 progress payment and the claimant is not, in fact, paid in  
23 exchange for the waiver and release or a single payee check or  
24 joint payee check is given in exchange for the waiver and release,  
25 the waiver and release shall follow substantially the following  
26 form:



- 1 fact, been paid the progress payment, the waiver and release shall
- 2 follow substantially the following form:

1 UNCONDITIONAL WAIVER AND RELEASE UPON  
2 PROGRESS PAYMENT

3 The undersigned has been paid and has received a progress payment in the  
4 sum of \$ \_\_\_\_ for labor, services, equipment, or material furnished to

5 \_\_\_\_\_ on the job of \_\_\_\_\_

6 (Your Customer)

(Owner)

7 located at \_\_\_\_\_ and does

8 (Job Description)

9 hereby release any mechanic's lien, stop notice, or bond right that the  
10 undersigned has on the above referenced job to the following extent. This  
11 release covers a progress payment for labor, services, equipment, or materials  
12 furnished to

13 \_\_\_\_\_ through \_\_\_\_\_  
14 (Your Customer) (Date)

15 only and does not cover any retentions retained before or after the release  
16 date; extras furnished before the release date for which payment has not been  
17 received; extras or items furnished after the release date. Rights based upon  
18 work performed or items furnished under a written change order which has  
19 been fully executed by the parties prior to the release date are covered by this  
20 release unless specifically reserved by the claimant in this release. This  
21 release of any mechanic's lien, stop notice, or bond right shall not otherwise  
22 affect the contract rights, including rights between parties to the contract  
23 based upon a rescission, abandonment, or breach of the contract, or the right  
24 of the undersigned to recover compensation for furnished labor, services,  
25 equipment, or material covered by this release if that furnished labor,  
26 services, equipment, or material was not compensated by the progress  
27 payment.

28 Dated: \_\_\_\_\_  
29 (Company Name)

30 By \_\_\_\_\_  
31 (Title)

32 Each unconditional waiver in this provision shall contain the following  
33 language, in at least as large a type as the largest type otherwise on the  
34 document:

35 "NOTICE: THIS DOCUMENT WAIVES RIGHTS  
36 UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID  
37 FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS  
38 ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU  
39 HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A  
40

(3) ~~Where~~*If* the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

Upon receipt by the undersigned of a check from \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of \_\_\_\_\_

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$\_\_\_\_. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

By \_\_\_\_\_  
(Title)

1 UNCONDITIONAL WAIVER AND RELEASE UPON FINAL  
2 PAYMENT

3 The undersigned has been paid in full for all labor, services, equipment or  
4 material furnished to

5 \_\_\_\_\_ on the job of \_\_\_\_\_

6 (Your Customer)

(Owner)

7 located at \_\_\_\_\_ and does

8 (Job Description)

9 hereby waive and release any right to a mechanic's lien, stop notice, or any  
10 right against a labor and material bond on the job, except for disputed claims  
11 for extra work in the amount of \$ \_\_\_\_\_.

12 Dated: \_\_\_\_\_

13 (Company Name)

14 By \_\_\_\_\_

15 (Title)

16 Each unconditional waiver in this provision shall contain the following  
17 language, in at least as large a type as the largest type otherwise on the  
18 document:

19 "NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY  
20 AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE  
21 RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF  
22 YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE  
23 NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."  
24

25 ~~3262. (a) Neither the owner nor original contractor by any~~  
26 ~~term of their contract, or otherwise, shall waive, affect, or impair~~  
27 ~~the claims and liens of other persons whether with or without~~  
28 ~~notice except by their written consent, and any term of the~~  
29 ~~contract to that effect shall be null and void. Any written consent~~  
30 ~~given by any claimant pursuant to this subdivision shall be null,~~  
31 ~~void, and unenforceable unless and until the claimant executes~~  
32 ~~and delivers a waiver and release. Such a waiver and release shall~~  
33 ~~be binding and effective to release the owner, construction~~  
34 ~~lender, and surety on a payment bond from claims and liens only~~  
35 ~~if the waiver and release follows substantially one of the forms~~  
36 ~~set forth in this section and is signed by the claimant or his or her~~  
37 ~~authorized agent, and, in the case of a conditional release, there is~~  
38 ~~evidence of payment to the claimant. Evidence of payment may~~  
39 ~~be by the claimant's endorsement on a single or joint payee~~



1 ~~check which has been paid by the bank upon which it was drawn~~  
2 ~~or by written acknowledgment of payment given by the claimant.~~

3 ~~(b) No oral or written statement purporting to waive, release,~~  
4 ~~impair or otherwise adversely affect a claim is enforceable or~~  
5 ~~creates any estoppel or impairment of a claim unless (1) it is~~  
6 ~~pursuant to a waiver and release prescribed herein, or (2) the~~  
7 ~~claimant had actually received payment in full for the claim.~~  
8 ~~Nothing in this section precludes a stop notice claimant from~~  
9 ~~reducing or releasing a stop notice that has been served upon an~~  
10 ~~owner, and any such reduction or release shall not preclude the~~  
11 ~~service of a subsequent stop notice that is timely and proper.~~

12 ~~(c) This section does not affect the enforceability of either an~~  
13 ~~accord and satisfaction regarding a bona fide dispute or any~~  
14 ~~agreement made in settlement of an action pending in any court~~  
15 ~~provided the accord and satisfaction or agreement and settlement~~  
16 ~~make specific reference to the mechanic's lien, stop notice, or~~  
17 ~~bond claims.~~

18 ~~(d) The waiver and release given by any claimant hereunder~~  
19 ~~shall be null, void, and unenforceable unless it follows~~  
20 ~~substantially the following forms in the following circumstances:~~

21 ~~(1) Where the claimant is required to execute a waiver and~~  
22 ~~release in exchange for, or in order to induce the payment of, a~~  
23 ~~progress payment and the claimant is not, in fact, paid in~~  
24 ~~exchange for the waiver and release or a single payee check or~~  
25 ~~joint payee check is given in exchange for the waiver and release,~~  
26 ~~the waiver and release shall follow substantially the following~~  
27 ~~form:~~

~~progress payment and the claimant asserts in the waiver it has, in~~

fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON  
PROGRESS PAYMENT

—The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for labor, services, equipment, or material furnished to  
- \_\_\_\_\_ on the job of \_\_\_\_\_ located at \_\_\_\_\_ -  
- (Your Customer) - (Owner) - (Job Description) -

and does hereby release any mechanic's lien stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

- \_\_\_\_\_ through \_\_\_\_\_ only and does not cover any  
- (Your Customer) - (Date) -

retentions retained before or after the release date; extras furnished before the release date for which payment has not been received ; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_ -  
\_\_\_\_\_ (Company Name) \_\_\_\_\_

By \_\_\_\_\_  
(Title) \_\_\_\_\_

—Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

“NOTICE: THIS \_\_\_\_\_ DOCUMENT \_\_\_\_\_ WAIVES \_\_\_\_\_ RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.”

~~(3) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:~~

~~CONDITIONAL WAIVER AND RELEASE UPON FINAL  
PAYMENT~~

~~— Upon receipt by the undersigned of a check from \_\_\_\_\_ in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of \_\_\_\_\_ located at \_\_\_\_\_.~~  
~~— (Owner) \_\_\_\_\_ (Job Description)~~

~~This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$ \_\_\_\_\_. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.~~

~~— Dated: \_\_\_\_\_ (Company Name)~~  
~~By \_\_\_\_\_ (Title)~~

~~(4) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form:~~

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL  
PAYMENT

—The undersigned has been paid in full for all labor, services, equipment or  
material furnished to

\_\_\_\_\_ on the job of \_\_\_\_\_

(Your Customer) (Owner)—

located at \_\_\_\_\_ and does

(Job Description)

hereby waive and release any right to a mechanic's lien, stop notice, or any  
right against a labor and material bond on the job, except for disputed claims  
for extra work in the amount of \$ \_\_\_\_\_.

Dated: \_\_\_\_\_

- (Company Name)

- By \_\_\_\_\_

- (Title)

—Each unconditional waiver in this provision shall contain the following  
language, in at least as large a type as the largest type otherwise on the  
document:

“NOTICE: THIS \_\_\_\_\_ DOCUMENT \_\_\_\_\_ WAIVES \_\_\_\_\_ RIGHTS  
UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID  
FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS  
ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU  
HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A  
CONDITIONAL RELEASE FORM.”

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